

Remesan Nair vs Madhu

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Court : Kerala

Decided On : Aug-31-2022

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/2517/2010

Appellant : Remesan Nair

Respondent : MADHU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA,
1944 MACA NO. 2517 OF 2010 OP(MV) 2245/2006 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM
APPELLANT/PETITIONER: REMESAN NAIR, S/O.KRISHNA PILLAI,
LOVE HOUSE, PALAMATTOM, UMPIDI P.O., THOTTAKAD,
CHANGANACHERRY. BY ADV SRI.THOMAS K.C.KUNNATHOOR
RESPONDENTS/RESPONDENTS:

*1 MADHU, PARECHIRA HOUSE, KALLKADAVU, ITHITHANAM P.O.,
CHANGANACHERRY, PIN - 686101. (DIED) 2 THE NATIONAL

INSURANCE CO. LTD., KOTTAYAM, PIN - 686001 *3 ADDL.R3 & R4 IMPEADED: SUNITHA MADHU, W/O LATE MADHU, PARACHIRA HOUSE, MALAKUNNAM, CHANGANACHERRY PIN 686533. *4 NANDANA MADHU, AGED 11 YEARS (MINOR) REPRESENTED BY MOTHER SUNITHA MADHU, W/O LATE MADHU, PARACHIRA HOUSE, MALAKUNNAM, CHANGANACHERRY PIN 686533 *LEGAL HEIRS OF DECEASED 1ST RESPONDENT ARE IMPEADED AS ADDITIONAL R3 AND R4 IN THE APPEAL, AS PER ORDER DATED MACA 2517 of 2010 2

R2 BY ADV SRI.LAL GEORGE ADDL.R3 & R4 BY ADV.SRI.AJITH VISWANATHAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 22.08.2022, THE COURT ON 31.08.2022 DELIVERED THE FOLLOWING: MACA 2517 of 2010 3

JUDGMENT

The claimant in OP(MV) No.2245 of 2006 on the file of Motor Accidents Claims Tribunal, Kottayam, is the appellant herein. He is challenging the impugned award for inadequacy of the compensation awarded under various heads and also challenging reduction of the award amount by 50%, attributing contributory negligence against the appellant.

2. The appellant met with a road traffic accident on

30.06.2006 at 7.30 p.m. KL-5/J-4368 auto rickshaw driven by the 1st respondent in a rash and negligent manner, knocked him down while he was riding his motorcycle through Changanacherry - Karukachal road. He was rushed to St.Thomas Hospital, Chethipuzha, and from there, he was taken to Pushpagiri Medical College Hospital, Thiruvalla for better treatment. He suffered serious injuries and disabilities due to the accident. He MACA 2517 of 2010 4 approached the Tribunal claiming compensation of Rs.6,16,000/-. But the Tribunal awarded only Rs.59,026/- and that is under challenge.

3. The 1st respondent was the owner-cum-driver of

the auto rickshaw and since he is no more, his legal heirs were impleaded as additional respondents 3 and 4. The 2nd respondent is the Insurer of the offending auto rickshaw.

4. The accident, injuries and the policy of the offending vehicle are not in dispute. But, according to the Insurer, the appellant contributed to the accident by riding his motorcycle through the wrong side.

5. Now let us see whether any interference is called for in the impugned award.

6. Exts.A1 to A6 will prove the accident involving KL-5/J-4368 auto rickshaw. PW1, the appellant deposed before Court that the accident occurred due to the rash MACA 2517 of 2010 5 and negligent driving of the auto rickshaw by the 1st

respondent. Ext.A4 Charge Sheet filed against the 1st respondent will substantiate his case that the accident occurred due to the rash and negligent driving of the auto rickshaw by the 1st respondent.

7. Learned counsel Sri.Lal Geroje appearing for the 2nd respondent submitted that Ext.A3 scene mahazar will show that the accident occurred 2.10 metres north from the southern tar end. According to PW1, he was riding his motorcycle from west towards east. So, he was supposed to go through the northern side of the road. The road at the place of occurrence was having width of 8.2 metres, and there was road margin of 85

cms on the northern side. According to the appellant, he was riding his motorcycle through the left side of the road and on seeing the auto rickshaw coming from opposite side he applied break. But the auto rickshaw MACA 2517 of 2010 6 which was coming in high speed hit on his face. He deposed that a lorry was parked in that road, and there was no space for two vehicles to pass, at a time.

8. The learned counsel appearing for the Insurer

would submit that parking of lorry at the scene of incident is a new story put forward by the appellant, and so, it cannot be taken into account. According to him, since the accident occurred on the wrong side with respect to the motorcycle,

it has to be presumed that the appellant contributed to the accident. Only on the basis of the scene mahazar, the 2nd respondent is attributing contributory negligence against the appellant. After investigation, Police found that the accident occurred due to the rash and negligent driving of the auto rickshaw by the 1st accused and so, he was charge sheeted under Sections 279 and 338 of the IPC.

9. In *Kolavan and others vs. Salim and others* MACA 2517 of 2010 7

reported in [ILR 2018 (1) Kerala 701], this Court held

that the Tribunal should not attribute negligence to any person solely on the basis of the recitals in the scene mahazar in the absence of any direct or corroborative evidence to prove such negligence. In the case on hand except the recitals in the scene mahazar, no evidence has been adduced by the Insurer to support their

contention that the accident occurred due to the negligence of the appellant also. Even if it is taken for argument's sake that a lorry was parked in that road and so the appellant went to the other side of the road while overtaking, if the auto rickshaw was driven carefully at a reasonable speed, the accident could have

been averted. Ext.A3 scene mahazar shows that the road at that place was having straight vision, and so also, if the driver of the auto rickshaw was vigilant enough that incident could have been avoided. So the MACA 2517 of 2010 8 Tribunal is not justified in attributing contributory negligence against the appellant so as to reduce 50% from the total compensation awarded.

10. So the appellant is entitled to get Rs.59,026/- which was reduced in the impugned award, towards contributory negligence of 50%.

11. Now coming to his claim of enhanced

compensation, towards transportation expenses, he was awarded only Rs.800/-. Immediately after the accident, he was taken to St. Thomas Hospital, Chethipuzha, and from there, he was taken to Pushpagiri Medical College Hospital, Thiruvalla. After discharge also he was taken to hospital for review on various occasions. So, this Court is inclined to award Rs.1,200/- more towards

transportation expenses.

12. Towards extra nourishment, he was awarded only Rs.1,500/-. He suffered injuries on his face and he MACA 2517 of 2010 9 was surviving on liquid food. So this Court is inclined to award Rs.1,000/- more towards extra nourishment.

13. Towards bystander expenses, only Rs.100/- per

day was awarded for the period of hospitalisation. Rs.200/- per day was only reasonable as the accident was in the year 2006. So, he is eligible to get Rs.1,200/- more as enhanced compensation towards bystander expenses.

14. Towards loss of income, the Tribunal awarded Rs.12,000/- taking his notional income as Rs.3,000/- for

four months. Even according to the appellant, he was a self-employed coffee supplier earning monthly income of Rs.3,000/-. So, the Tribunal is justified in taking his income as Rs.3,000/-. But considering the injuries he had suffered in the accident, his loss of income could be taken for a period of eight months. So, he is entitled to get Rs.12,000/- more as enhanced compensation for

MACA 2517 of 2010 10 loss of income.

15. Towards pain and suffering, he was awarded

Rs.15,000/-. Considering the nature of injury, period of hospitalisation and procedures undergone, Rs.5,000/- more could have been awarded towards pain and suffering.

16. In the accident, he lost his two teeth, for which

the Tribunal awarded Rs.2,000/-. Since he was a 29 year old man, loss of teeth at his young age and fixing of artificial dentures will affect his cosmetic appearance also. Considering that fact, this Court is inclined to award Rs.2,000/- more for the loss of teeth.

17. According to the appellant, he suffered

permanent disability due to the accident. But the Tribunal did not award any amount under that head. The Tribunal found that no serious deformities were visible in the nose and face of the appellant. But considering the MACA 2517 of 2010 11

serious nature of injuries suffered by the appellant, Rs.15,000/- was awarded towards disability and loss of amenities in life. Ext.A10 the Certificate issued from Pushpagiri Medical College Hospital, Thiruvalla, shows that the appellant had mild difficulty in opening mouth, deformity of forehead, nose and face, visual defect and two teeth loss. His disability was shown as 20%. The Doctor, who issued the Certificate was not examined

before Court. The appellant was not subjected to examination by the Medical Board. Moreover, it is not mentioned in Ext.A10 Certificate that the disability of 20% noted, was with respect to the whole body. Moreover, there is nothing to show that the problems noted in Ext.A10 in any way affected his earning capacity. Though the percentage of disability considered by the Tribunal is not specifically mentioned, the Tribunal awarded Rs.15,000/- taking into account the disability

MACA 2517 of 2010 12 and loss of amenities. Considering the fact that there was some deformity on his forehead, nose and face with visual defect, this Court is inclined to award Rs.5,000/- more towards disability and loss of amenities.

Head of claim	Amount	Amount	Difference to be
compensation 50% of the	Rs.59,026/-	Rs.1,18,053/-	Rs.59,026 /-
Compensation amount	Transportation Rs.800/-	Rs.2,000/-	Rs.1,200/-
expenses	Extra Rs.1,500/-	Rs.2,500/-	Rs.1,000/-
nourishment	Bystander Rs.1,200/-	Rs.2,400/-	Rs.1,200/-
expenses	Loss of income Rs.12,000/-	Rs.24,000/-	Rs.12,000/-
Pain and	Rs.15,000/-	Rs.20,000/-	Rs.5,000/-
suffering	Loss of two	Rs.2,000/-	Rs.4,000/-
teeth	Disability and Loss of	Rs.15,000/-	Rs.20,000/-
amenities	Total Rs.86,426/-	MACA 2517 of 2010 13	

18. In the result, the appellant is entitled to get

enhanced compensation of Rs.86,426/- (59,026 + 1,200 + 1,000 + 1,200 + 12,000 + 5,000 + 2,000 + 5,000) (Rupees Eighty Six Thousand Four Hundred and Twenty Six only).

19. The 2nd respondent-Insurer is directed to

deposit enhanced compensation of Rs.86,426/- (Rupees Eighty Six Thousand Four Hundred and Twenty Six only) in the Bank account of the appellant with 7% interest from the date of petition till the date of deposit, within a period of two months from the date of receipt of a copy of this judgment. The deposit must be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06/09/2019 and clarified in O.M.No.D1/62475 /2016 dated 07/11/2019 after deducting the liabilities, if any, of the appellant towards Tax, balance court fee and legal benefit fund.

MACA 2517 of 2010 14 The appeal is allowed accordingly. No order as to costs.
Sd/- SOPHY THOMAS, JUDGE DSV/30.08.2022

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